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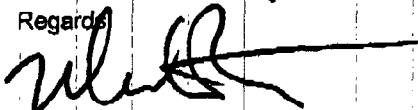
Legal & Regulatory Affairs

Fax

To: Evangelina Tsibris Cummings From: Michael Pearlstein
Fax: _____ Pages: 5
Phone: 703-812-2036 Date: 06/14/02
Re: Data Quality Comments
☐ Urgent ☐ For Review ☒ Please Comment ☐ Please Reply ☐ Please Recycle

Dear Ms. Cummings ... See attached.

Regards



Michael Pearlstein

Manager, Federal Regulatory Affairs



May 28, 2002

Ms. Evangeline Tsibris Cummings
U.S. Environmental Protection Agency
Office of Environmental Information, Mail Code 2842T
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: Docket ID No. OEI-10014
Comments on Draft Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Environmental Protection Agency.

Dear Ms. Cummings:

On behalf of the Associated Builders and Contractors (ABC), I respectfully submit the following comments on the Draft Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Environmental Protection Agency, as published in the *Federal Register* on April 30, 2002 (67 FR 21234).

ABC represents 23,000 merit shop contractors, subcontractors, material suppliers and construction-related firms in 81 chapters across the United States. The vast majority of these members are small businesses with 10 employees or less. ABC members regularly engage in projects that are subject to environmental regulations.

ABC and its members appreciate and share EPA's concern in helping protect our environment. That is why ABC has worked with EPA on numerous rulemakings and other regulatory actions and is currently working with the agency to create an on-line compliance clearinghouse for the construction industry. We have seen first-hand the importance of data quality in EPA's rulemaking efforts and we appreciate the opportunity to use our experience in commenting today on EPA's data quality guidelines.

I. Background

EPA has prepared these guidelines in accordance with The Treasury and General Government Appropriations Act for FY 2001 (Public Law 106-554). Section 515 of the legislation directed agencies subject to the Paperwork Reduction Act to:

- issue guidelines ensuring and maximizing the quality, objectivity, utility, and integrity of information disseminated by the agency;

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- establish administrative mechanisms allowing affected persons to seek and obtain correction of information maintained and disseminated by the agency that does not comply with the aforementioned guidelines; and,
- report periodically to the Office of Management and Budget director on the number and nature of complaints regarding accuracy of data and how these complaints are handled by the agencies.

The president signed this legislation in December 2000 and ABC lauded the inclusion of the foregoing provision as a potentially effective way to improve the regulatory process. The Office of Management and Budget, in accordance with the legislation, subsequently published their final guidelines on February 22, 2002. These guidelines comport with the legislative intent and we urge other agencies to compose their corresponding guidelines in a manner that adheres as closely as possible to the parameters laid out by the OMB.

II. EPA's Guidelines

ABC believes that EPA's mission is best served by ensuring that environmental regulations are developed transparently and are grounded in good science, backed by sound data. Regulations developed in this manner promote trust and compliance in the regulated community and therefore help accomplish EPA's ultimate objective of a less-polluted environment.

While we commend EPA for following OMB's lead in several areas of its proposal -- and for demonstrating innovation in others -- we are concerned about several aspects of the EPA guidelines. Instead of embracing every opportunity to enhance the agency's data quality assurance measures, EPA has provided itself with a number of loopholes, qualifications, and definitional advantages that are at cross-purposes with the intent of the data quality initiative. For example, EPA states at line 761 of its proposal that it "may elect not to correct some completed information products on a case-by-case basis due to Agency priorities, time constraints, or resources." This provision, along with other "escape clauses", appears to circumvent both the legislative intent and the OMB guidelines. We urge EPA to reconsider this approach when preparing a final version so that these guidelines do, in fact, promote the trust and compliance in the regulated community that is so important to the preservation of our environment.

In the sections below, we identify the issues we find most important and provide comment on the manner in which EPA addresses these issues, providing suggestions, as appropriate.

A. EPA Limits on Applicability of Data Quality Guidelines

EPA makes numerous references in its proposal that imply a limitation on the applicability and scope of data quality guidelines. For example, EPA states beginning in line 402 that the guidelines do not impose any "legally binding requirements or obligations" and that the agency has the "discretion to adopt approaches on a case-by-case basis that differ from the

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guidelines, where appropriate." These provisions are not only contrary to the objective of the data quality initiative, but they are also contrary to the mandates of the underlying legislation, the Paperwork Reduction Act of 1995 and the OMB implementing guidelines. A specific example of EPA limiting the scope of its data quality guidelines illustrates our concerns.

1. Discussion of EPA's limitation on error corrections in rulemaking procedures

EPA states in its proposal beginning at line 737 that the agency will not consider requests for correction of information if it "pertains to EPA actions, where a mechanism by which to submit comments to the Agency is already provided." As EPA notes, agency rulemakings fall into this category.

We believe that EPA has erred in creating for itself such a broad exemption. The rulemaking process generates vast amounts of data. Evaluating this data and submitting comments is an onerous and time-consuming task that must be performed in as few as 30 days in some circumstances. In these situations there is a significant risk that data errors will be left uncovered, resulting in a flawed regulation.

Another problem with this approach is that the rulemaking process can go on for several years. If rulemakings are exempted from EPA's error correction measures, affected entities may be forced to endure lengthy waits before their request for data correction is reviewed. In the meantime, the agency may rely on potentially faulty data as it moves forward toward completing a final rule.

We believe we have a shared goal of accuracy and efficiency in the rulemaking process and thus we urge EPA to review and modify limiting provisions such as the foregoing and to broaden the applicability and scope of its data quality guidelines proposal.

B. EPA's Response to Requests for Correction of Information

ABC is concerned that EPA has not provided adequate measures in its guidelines to ensure that responses to requests for correction of information are made in a timely and public manner.

1. EPA should provide a timeframe for responses to requests for correction of information

One of the key purposes of the Data Quality Act and of OMB's implementing guidelines is to enable parties to obtain timely correction of information. To effectuate this purpose, OMB included in its guidelines a requirement that agencies "shall specify appropriate time periods for agency decisions on whether and how to correct the information," (67 FR 8459) (emphasis added). EPA has neglected to include in its proposal any indication of an appropriate timeframe in which to decide upon affected persons' requests. We suggest that EPA propose a 45 working day time limit for the agency to respond to the petitioner with either a decision or an explanation of why more time is needed, along with a revised estimated decision date.

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2. EPA should notify the public of a request for error correction and any corrective action taken

Our members rely on EPA data to conduct their activities in accordance with the law. When EPA data is called into question, it would be appropriate for our members – and the public at-large – to be notified of the potentially flawed data. This would enable regulated entities to more carefully scrutinize the data and take any corrective measures that might be appropriate.

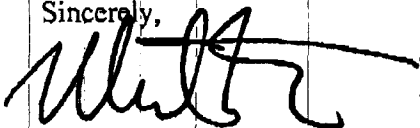
EPA, unfortunately, has not included any mechanism that would provide notice to the public of a legitimate request for data correction. We urge EPA to include such a provision in its final guidelines. This notification should be disseminated in the same manner that the original information was disseminated so that the same, presumably affected audience will be on notice.

III. Conclusion

Environmental regulations must be based on good science and supported by reliable data. Regulations developed and promulgated in such a manner will achieve greater results and will promote trust and compliance on the part of regulated entities. The Data Quality Act and the OMB implementing guidelines demonstrate an awareness of this fact and are a welcomed development.

EPA's own data quality guidelines, however, while sufficient in some respects, demonstrate a more tepid acceptance of this view. Instead of fully embracing measures that would improve the quality of data maintained and disseminated by the agency, EPA has sought to limit the application and scope of the data quality initiative. ABC urges EPA to reconsider this approach when preparing final guidelines, with specific emphasis on the areas discussed more extensively herein.

Sincerely,



Michael Pearlstein
Manager, Regulatory Affairs

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